

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KIM COLSTON,
Petitioner,
v.
WARDEN,
Respondent.

Case No. [18-cv-04595-PJH](#)

**ORDER DISMISSING PETITION WITH
LEAVE TO AMEND**

Re: Dkt. Nos. 3, 7

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner was convicted in Alameda County which is in this district, so venue is proper here. See 28 U.S.C. § 2241(d). He has also filed an application to proceed in forma pauperis.

BACKGROUND

Petitioner states he has a prior conviction from 1992 and was convicted in the Superior Court of Oakland for a home invasion and was sentenced to 15 years. Petition at 2. Petitioner does not state when the recent conviction occurred, and the court was unable to find any record of an appeal to the California Supreme Court or California Court of Appeal.

DISCUSSION

STANDARD OF REVIEW

This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet

1 heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An
2 application for a federal writ of habeas corpus filed by a prisoner who is in state custody
3 pursuant to a judgment of a state court must “specify all the grounds for relief available to
4 the petitioner ... [and] state the facts supporting each ground.” Rule 2(c) of the Rules
5 Governing § 2254 Cases, 28 U.S.C. § 2254. “[N]otice’ pleading is not sufficient, for the
6 petition is expected to state facts that point to a ‘real possibility of constitutional error.’”
7 Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir.
8 1970)).

9 **LEGAL CLAIMS**

10 As grounds for federal habeas relief, petitioner asserts that: (1) trial counsel was
11 ineffective; (2) appellate counsel was ineffective; (3) there was a double jeopardy
12 violation; and (4) a final claim that is incomprehensible.

13 Petitioner’s first three claims are difficult to understand, and his fourth claim is
14 incomprehensible. The petition is dismissed with leave to amend. Petitioner must first
15 address whether his claims have been exhausted by being presented to the California
16 Supreme Court and when he was convicted to demonstrate that this case is timely. He
17 must also provide more information on each claim as the court is unsure of the specific
18 allegations of each claim and he should clarify the relevance of the 1992 conviction.
19 Petitioner should also indicate if he has used a different name while appealing his
20 conviction.

21 **CONCLUSION**

- 22 1. The motion to proceed in forma pauperis (Docket Nos. 3, 7) is **GRANTED**.
- 23 2. The petition is **DISMISSED** with leave to amend in accordance with the
24 standards set forth above. The amended petition must be filed no later than **December**
25 **7, 2018** and must include the caption and civil case number used in this order and the
26 words AMENDED PETITION on the first page. Failure to file an amended petition may
27 result in the dismissal of this action.
28

1 3. Petitioner is reminded that all communications with the court must be
2 served on respondent by mailing a true copy of the document to respondent's counsel.
3 Petitioner must keep the court informed of any change of address and must comply with
4 the court's orders in a timely fashion. Failure to do so may result in the dismissal of this
5 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). See
6 *Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas
7 cases).

8 **IT IS SO ORDERED.**

9 Dated: November 8, 2018



PHYLLIS J. HAMILTON
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KIM COLSTON,
Plaintiff,

v.

WARDEN,
Defendant.

Case No. [18-cv-04595-PJH](#)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 8, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kim Colston ID: AM0258
California Medical Facility
P.O. Box 2000
Vacaville, CA 95696-2000

Dated: November 8, 2018

Susan Y. Soong
Clerk, United States District Court



Kelly Collins, Deputy Clerk to the
Honorable PHYLLIS J. HAMILTON